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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORACLE USA, INC., *et al.*,
Plaintiffs,
v.
SAP AG, *et al.*,
Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

**DECLARATION OF JENNIFER
GLOSS IN SUPPORT OF
ADMINISTRATIVE MOTION TO
SEAL PLAINTIFFS' DOCUMENTS
SUPPORTING DEFENDANTS'
MOTION TO COMPEL**

1 I, Jennifer Gloss, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am Senior
3 Corporate Counsel at Oracle USA, Inc. ("Oracle"). I have personal knowledge of the facts stated
4 within this Declaration and could testify competently to them if required.

5 2. I have reviewed the documents and testimony identified as Exhibits A, C, F, G, H
6 and K of the Declaration of Scott W. Cowan (the "Cowan Declaration") filed in support of
7 Defendants' Motion to Compel ("Defendants' Motion"). Each of these documents contains non-
8 public, commercially sensitive, private and confidential information, the disclosure of which
9 would create a risk of significant competitive injury and particularized harm and prejudice to
10 Oracle.

11 3. Oracle has narrowly tailored its request by only requesting redaction or sealing of
12 the specific testimonial passages, documents, and information that contain the most
13 commercially sensitive, private and confidential information. For example, Oracle has agreed
14 that the material on pages 5:22-6:3, 60:10-25, and 77:2-19 of the deposition of Jason Rice, an
15 Oracle principal software engineer, and Appendix 5 can be filed publicly. The testimony and
16 documents, for which Oracle does request filing under seal are detailed as follows, and contain
17 the specified types of confidential, private and commercially sensitive information justifying
18 their protection under the sealing rules of this Court, including Rule 26(c), Local Rule 79-5, and
19 the Court's Standing Order Involving Sealed or Confidential Documents:

- 20 a. Exhibit A – Pages 11:1-13:22 and 67:25-69:14 of the deposition of Jason Rice, an
21 Oracle principal software engineer, taken December 4, 2009 contain non-public,
22 commercially sensitive and confidential information, including but not limited to
23 information related to (1) Oracle's internal investigation of defendants' illegal
24 access to and taking of Oracle intellectual property from its customer support
25 website and (2) technical details regarding the manner in which Oracle's software
26 and support materials are coded, associated, and maintained within Oracle's
27 customer support databases. Disclosure of such information would grant Oracle's
28 competitors, partners, customers, and other interested parties an insight into

1 Oracle's internal strategy and operations that would provide them with an unfair
2 competitive advantage with respect to current and future operations. Accordingly,
3 the disclosure of such confidential information would create a risk of significant
4 competitive injury and particularized harm and prejudice to Oracle.

5 b. Exhibit C – Exhibit A incorporated in and attached to Plaintiffs' December 4,
6 2009 Fifth Amended and Supplemental Responses and Objections to
7 TomorrowNow, Inc.'s First Set of Interrogatories, Response to Interrogatory No.
8 7, contains non-public, commercially sensitive and confidential information,
9 including but not limited to: (1) information contained in customers' license
10 agreements and renewal notices, (2) information contained on Oracle's customer
11 support website and databases, and (3) information related to Oracle's internal
12 system code mapping data. Disclosure of such information would grant Oracle's
13 competitors, partners, customers, and other interested parties an insight into
14 Oracle's internal strategy and operations that would provide them with an unfair
15 competitive advantage with respect to current and future operations and
16 negotiations. Accordingly, the disclosure of this testimony would create a risk of
17 significant competitive injury and particularized harm and prejudice to Oracle.

18 c. Exhibit F – Copy of a CD produced by Plaintiffs' on November 16, 2009 and
19 labeled ORCLX-MAN-000016 contains non-public, commercially sensitive and
20 confidential technical detail regarding software and support materials that Oracle
21 creates for its customers. Disclosure of such information would also grant
22 Oracle's competitors, partners, customers, and other interested parties an insight
23 into Oracle's operations that would provide them with an unfair advantage with
24 respect to current and future operations and negotiations. Accordingly, disclosure
25 of such confidential information would create a risk of significant competitive
26 injury and particularized harm and prejudice to Oracle.

27 d. Exhibit G – Defendants' deposition exhibit 932 contains non-public,
28 commercially sensitive and confidential technical detail regarding the manner in

1 which Oracle's software and support materials are coded, associated, and
2 maintained within Oracle's customer support databases. Disclosure of such
3 information would also grant Oracle's competitors, partners, customers, and other
4 interested parties an insight into Oracle's operations that would provide them with
5 an unfair advantage with respect to current and future operations. Accordingly,
6 disclosure of such confidential information would create a risk of significant
7 competitive injury and particularized harm and prejudice to Oracle.

8 e. Exhibit H – Defendants' deposition exhibit 935 contains non-public,
9 commercially sensitive and confidential customer information, including Oracle's
10 customer contact information. Disclosure of such information would also grant
11 Oracle's competitors, partners, customers, and other interested parties an insight
12 into Oracle's customer list, customer contacts, and operations that would provide
13 them with an unfair advantage with respect to current and future operations and
14 competition. Accordingly, disclosure of such confidential information would
15 create a risk of significant competitive injury and particularized harm and
16 prejudice to Oracle.

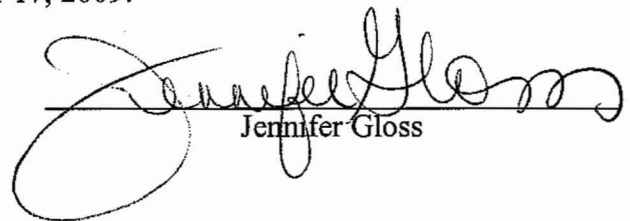
17 f. Exhibit K – Plaintiffs' privilege and redaction log entries dated from February 13,
18 2007 through March 16, 2007 contain non-public, commercially sensitive and
19 confidential information related to privileged communications, including the
20 names of the Oracle employees involved in privileged communications relating to
21 this Action. Disclosure of such information would also grant Oracle's
22 competitors and other interested parties an insight into Oracle's operations that
23 would provide them with an unfair advantage with respect to current and future
24 operations and negotiations. Accordingly, disclosure of such confidential
25 information would create a risk of significant competitive injury and
26 particularized harm and prejudice to Oracle.

27 4. Further, portions of Defendants' Motion contain quotes or other descriptions from
28 documents identified in Paragraph 3 above. Oracle has narrowly tailored its request by only

1 requesting redaction or sealing of the specific passages that contain non-public, commercially
 2 sensitive confidential information the disclosure of which would create a significant risk of
 3 competitive injury and particularized harm and prejudice to Oracle, as described in detail above
 4 in Paragraph 3. These passages are portions of page 8, line 27, page 9, lines 1-5, 11-24, page 10,
 5 lines 1-9, page 11, lines 15-20, 22-24, and page 12, lines 1-4. The passages include direct
 6 quotation of the confidential deposition testimony, portions of interrogatory responses, and
 7 technical documents/data described above in Paragraph 3. Consistent with Paragraph 3 above,
 8 the disclosure of such confidential information would create a risk of significant competitive
 9 injury and particularized harm and prejudice to Oracle.

10 5. Plaintiffs have protected information in the specific portions of Exhibits A, C, F,
 11 G, H, and K of the Cowan Declaration from improper public disclosure through the Stipulated
 12 Protective Order that is designed to prevent the Parties' private commercial information from
 13 being improperly disclosed. Under the terms of that Order, Plaintiffs designated certain
 14 documents, deposition testimony and discovery responses containing non-public, commercially-
 15 sensitive information as either "Confidential" or "Highly Confidential - Attorneys' Eyes Only"
 16 prior to producing such documents in the course of discovery. As attested to above, the specific
 17 portions of Exhibits A, C, F, G, H, and K of the Cowan Declaration contain certain information
 18 taken from documents and testimony that was designated either "Confidential" or "Highly
 19 Confidential - Attorneys' Eyes Only." Absent the requested sealing, these Exhibits would
 20 provide valuable insight into Oracle's confidential internal competitive strategies and business
 21 processes and would create a risk of significant competitive injury and particularized harm and
 22 prejudice to Oracle.

23 I declare under penalty of perjury that the foregoing is true and correct. Executed
 24 in Redwood Shores, California, on December 17, 2009.

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 27 Jennifer Gloss
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